IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.19005 of 2003

Between:

M. Govinda Rao, s/o Manikyam, 48 years
D.No.54-12-61, Bhanu Nagar, Maddelapalem, Visakhapatnam.

...PETITIONER

AND

The Commissioner, Municipal Corporation of Visakhapatnam, Visakhapatnam.

...RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent to demolish the structures of the petitioner situated in the plot bearing Door No.57-1-86, Sy.No.4/2(p), Ward No.43, Subash Nagar in Kancherapalem Area, Visakhapatnam, as illegal, arbitrary with a direction to the respondents not to demolish the petitioner's house structures in Door No.57-1-86, Sy.No.4/2(p), Ward No.43, Subash Nagar in Kancherapalem Area, Visakhapatnam without due process of law.

Counsel for the Petitioner: MR.K.MANMADHA RAO

Counsel for the Respondent: MR.T.S.VENKATARAMANA, Standing Counsel for Municipal Corporation, Visakhapatnam.

The Court made the following:

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ORDER:

The petitioner owns a house bearing No.57-1-86 in Survey No.4/2(p), Ward No.43, Subash Nagar in Kancherapalem area, Visakhapatnam. He filed the Writ Petition seeking a declaration that the action of the respondent in demolishing the structures of the petitioner's house is illegal and arbitrary. He also sought a consequential direction not to demolish the structures. This Court while directing the learned standing counsel for Municipal Corporation of Visakhapatnam ('the Corporation' for short) to get instructions passed interim order of *status quo*. Subsequently, the matter was admitted. Later the Corporation has filed counter-affidavit and an application being W.V.M.P.No.2163 of 2004 for vacating the interim order, dated 25.09.2003. At that stage itself the matter is being heard finally and being disposed of at the interlocutory stage.

The case of the petitioner is that he has purchased property in the year 1990 and after obtaining permission from the Corporation, he constructed the building. In the year 1998, he also applied to the respondent-Corporation for regularization of the unauthorized constructions and the Corporation by proceedings in B.A.No.2719/97/ACPIII, dated 12.02.1998, regularized the unauthorized constructions. He alleges that the respondent is trying to demolish the structures in connection with laying of municipal drinking water pipe lines in the petitioner's property. He alleges that without any notice and without due process of law, the respondent is trying to lay the pipe lines.

In the counter-affidavit filed by the City Planner on behalf of the respondent-Corporation, it is stated that the petitioner constructed R.C.C. roof building in the second floor with plinth area of 124.38 square meters as against 37.16 square meters and constructed a cellar floor in between the RCC columns raised to a height of 2.14 meters in between the original ground level and front main road level and using it for residential purpose. Further, as per the Government orders in G.O.Ms.No.343/M.A./dated 02.12.1997, the unauthorized construction made by the petitioner was regularized after collecting the penal amount of Rs.15,000/- (Rupees fifteen thousand only). After receiving the orders of the regularization, the petitioner again made unauthorized constructions as the Corporation removed all unauthorized constructions, which are coming in the alignment line of Tatipudi Water Supply Main Pipe Line. It is also stated that while digging the pipe line in front of the petitioner's house, the Corporation has not encroached or demolished any structures and the pipe line was allowed only up to 10.36 x 1.90 meters, which was relinquished by the petitioner. The same line was demarcated.

The petitioner has not filed reply-affidavit denying various averments made in the

counter-affidavit. Therefore, it must be held that the counter averments stand proved. The petitioner having relinquished the portion of the pipe line as mentioned herein above in favour of the Corporation for laying Tatipudi Water Supply Main Pipe Line, has suppressed the facts and approached this Court making false allegations. The Writ Petition is devoid of merits and is liable to be dismissed with exemplary costs.

The Writ Petition is dismissed with costs at Rs.2,000/- (Rupees two thousand only).

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(V.V.S.RAO, J)

17th August 2004

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commissioner, Municipal Corporation of Visakhapatnam, Visakhapatnam.

2. Two CD copies.